



# SOCMA

SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION

August 9, 2002

Assistant Administrator Marianne Horinko  
Office of Solid Waste and Emergency Response (5101T)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: Exemption of Intra-Industry Recycling in the Batch Specialty Chemical Industry from the Definition of Solid Waste

Dear Ms. Horinko:

On July 15, 2002, the Synthetic Organic Chemical Manufacturers Association (SOCMA) met with you and others in the Office of Solid Waste to discuss EPA's plans regarding the regulatory definition of solid waste. The meeting provided SOCMA with further insights into the issues under consideration by the Agency and prompted further discussion within SOCMA of the recycling opportunities available within the batch specialty chemical industry.

SOCMA understands that the Office of Solid Waste is now focused on development of an initial proposal to exempt from the regulatory definition of solid waste materials reused in a continuous industrial process within the same generating industry. SOCMA and its members are particularly interested in how this concept would apply to the specialty batch chemical manufacturing sector.

SOCMA has previously provided EPA with materials describing the unique nature of batch specialty chemical manufacturing operations and the recycling opportunities that its members would like to pursue. As outlined below, batch specialty chemical manufacturing operations present some distinct issues, which SOCMA believes can and should be addressed in the upcoming regulatory proposal:

1. Continuous industrial process. By use of the word "continuous", SOCMA understands the Agency to mean ongoing use of material, as in continued use of the material for a manufacturing purpose. SOCMA could support this construction of the phrase. On the other hand, SOCMA considers it critical that EPA clarify that the phrase "continuous industrial process" is not to be narrowly interpreted to refer only to a single manufacturing operation that runs on a constant and uninterrupted basis.

This is an important distinction from the perspective of batch specialty chemical manufacturing. In the batch specialty chemical industry, products are manufactured in relatively smaller quantities by use of batch processing. Even though the nature of the

manufacturing operation requires shorter production runs that start and stop, these operations and those that use their products still engage in ongoing manufacturing operations and should, in that sense, be recognized as engaged in continuous industrial processing.

2. Same generating industry. EPA apparently intends to focus on an exemption for materials that are recycled or reused within "the same generating industry." SOCMA questions the basis for this limitation and is concerned that this concept could be misapplied to batch specialty chemical operations.

Batch specialty chemical manufacturers make a range of specialty chemicals, intermediates and products that are used in different "industries." Similarly, they generate a range of secondary materials that could potentially be used or reused in a range of industries.

By way of illustration, in a recent discussion with staff from the Office of Solid Waste, SOCMA members confirmed that within a given month the NAIC classification of an individual facility could change several times, as different batch production runs made specialty chemicals for different industries, such as pharmaceuticals, dyes and pigments, and paints and coatings. In all instances, the manufacturing process is batch specialty chemical production, but as the term implies, the products are specially made to the needs of a range of different customers. Thus, SOCMA urges EPA to recognize the need to use a broad concept of "generating industry" as many industry sectors cannot neatly be identified by a narrow range of products or industry codes. Based on discussions with SOCMA members, specialty batch chemical manufacturers can be expected to generate materials that can be reused and recycled within larger industrial categories, such as the 3 digit NAIC code 325 that encompasses Chemical Manufacturing.

3. Offsite/On-site. On occasion, EPA has indicated that it might limit the exemption under consideration to materials used or recycled at the same location. SOCMA does not understand the legal basis for this distinction and is further concerned about its prejudicial impact on small businesses and small facilities.

SOCMA believes that the pertinent line of inquiry is if a material is being used or reused as part of an on-going industrial process, not whether it occurs on-site or off-site. However, large manufacturing complexes often have more than one manufacturing activity occurring within the same "location." Conversely, a small specialty manufacturer who produces a specialty intermediate for a single customer may have a secondary material that could be used or recycled by that customer as part of an ongoing manufacturing operation. The fact that the production of the intermediate and the product occur in two different locations should not alter the analysis with respect to the legitimacy of the ongoing recycling and reuse. Consequently, SOCMA urges EPA to rely on a range of factors – not just site location – to identify legitimate ongoing recycling and reuse.

4. Extended storage. SOCMA urges EPA to recognize that certain industries need the opportunity to produce and accumulate sufficient quantities of secondary materials to make transportation and recycling and/or reuse economically viable. Depending upon customer demand, a batch specialty chemical manufacturer may need to accumulate small amounts of a secondary material from different production runs over quite some time in order



to accumulate a quantity that justifies transportation costs or to match the production needs of another batch manufacturer. At present many SOCMA members are unable to take advantage of recycling opportunities due to the need to comply with the 90-day on-site storage limitation that applies to facilities that do not have Part B permits. An exemption that acknowledges that secondary materials can be stored for extended periods of time, both at the site of generation and at the site of ultimate recycling or reuse, for legitimate reasons would be of real benefit in promoting reuse and recycling in the batch specialty chemical manufacturing industry.

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SOCMA appreciates the Agency's attention to the need to revise the redefinition of solid waste to facilitate increased recycling and resource recovery. SOCMA is offering the foregoing comments in specific response to EPA's stated intent to focus first on developing a narrower exclusion for recycling within "the same generating industry." As noted above, SOCMA believes that EPA should use the broadest possible approach to this term, if indeed the Agency continues down this path in its rulemaking effort. In addition, SOCMA urges EPA to continue beyond this initial effort to pursue even broader reform of the definition of solid waste. Many SOCMA members have identified legitimate potential recycling opportunities that would still fall outside the more limited type of exclusion presently under consideration by the Agency. We hope to work the Agency to address those issues as well.

We look forward to continuing to work with the Agency and would be pleased to provide any additional information that might be helpful. If you have any questions, please contact me at (202) 721-4198 or [gunnulfssenj@socma.com](mailto:gunnulfssenj@socma.com).

Sincerely yours,

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cc:  
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